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*Counsel for Defendant Meta Platforms, Inc.  
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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

ERICA FRASCO, et al., individually and on  
 behalf of all other similarly situated,

Plaintiffs,

v.

FLO HEALTH, INC., et al.,

Defendants.

Case No. 3:21-CV-00757-JD

**UPDATED JOINTLY PROPOSED  
 REVISIONS TO PROPOSED  
 PRELIMINARY JURY INSTRUCTIONS**

Trial Date: July 21, 2025  
 Time: 8:30 am  
 Judge: Hon. James Donato  
 Ctrm: 11 – 19th Floor, SF

1 The parties have reviewed the Court's proposed preliminary instructions and jointly  
2 propose the following modifications:

3 1. In Instruction No. 2, the parties propose clarifying that Meta was known as  
4 Facebook during the relevant time period to avoid potential confusion, as the jury will see and hear  
5 many references to Facebook in documents and testimony. Specifically, the parties propose adding  
6 the following language:

7 The plaintiffs are Erica Frasco, Sarah Wellman, Jennifer Chen, Tesha  
8 Gamino, and Autumn Meigs. The defendants are Flo Health and Meta.  
9 During the time period relevant to this case, Meta was known as  
10 Facebook. Documents and witnesses may use the names Meta and  
11 Facebook interchangeably.

12 2. Also in the Instruction No. 2, the parties propose correcting the reference to the  
13 "California Information Privacy Act" to reflect that the claim alleged against Meta arises under  
14 the "California Invasion of Privacy Act."

15 3. Finally, in Instruction No. 10, the parties suggest that the Court remove references  
16 to Google and update the list of Custom App Events at issue in light of Plaintiffs' settlement with  
17 Google.

18 The proposed revised instructions follow.

INSTRUCTION NO. 2

CLAIMS AND DEFENSES

To help you follow the evidence, I will give you a brief summary of the parties' positions.

The plaintiffs are Erica Frasco, Sarah Wellman, Jennifer Chen, Tesha Gamino, and Autumn Meigs. The defendants are Flo Health and Meta. During the time period relevant to this case, Meta was known as Facebook. Documents and witnesses may use the names Meta and Facebook interchangeably. All five plaintiffs have claims against Flo Health in connection with their use of the Flo Period and Ovulation Tracker app for women ("Flo App"). Three plaintiffs – Chen, Gamino, and Wellman – also have claims against Meta.

Plaintiffs allege that Flo Health shared Flo App users' menstrual and sexual health information with Meta and violated the California Confidentiality of Medical Information Act, invaded their privacy, and breached the terms of its Privacy Policy. Plaintiffs Chen, Gamino, and Wellman also allege that Meta violated the California Invasion of Privacy Act. Plaintiffs have the burden of proving each claim by a preponderance of the evidence as to each defendant.

Flo Health denies all of plaintiffs' claims. Flo Health alleges as affirmative defenses that users consented to the alleged information sharing and that users did not file their lawsuit within the time permitted by the statute of limitations. Flo has the burden of proving each affirmative defense by a preponderance of the evidence.

Meta denies the claim of plaintiffs Chen, Gamino, and Wellman. Meta alleges as an affirmative defense that these plaintiffs did not file their lawsuit within the time permitted by the statute of limitations. Meta has the burden of proving its affirmative defense by a preponderance of the evidence.

INSTRUCTION NO. 10

**STIPULATIONS OF FACT**

The parties have agreed to certain facts that I will now read to you. You must treat these facts as having been proved.

1. Plaintiff Erica Frasco is a citizen of the State of New Jersey who downloaded the Flo App.
2. Plaintiff Sarah Wellman is a citizen of the State of California who downloaded the Flo App.
3. Plaintiff Jennifer Chen is a citizen of the State of California who downloaded the Flo App.
4. Plaintiff Tesha Gamino is a citizen of the State of California who downloaded the Flo App.
5. Plaintiff Autumn Meigs is a citizen of the State of Ohio who downloaded the Flo App.
6. Defendant Flo Health, Inc. (“Flo”) is the developer of the Flo App.
7. Defendant Meta Platforms, Inc. (“Meta”) is a technology company that, among other things, offers free tools like ~~the~~ a Facebook SDK to allow businesses to build unique and customized solutions to serve their clients.
8. Plaintiffs first filed a lawsuit against Flo based on purported injuries arising from their use of the Flo App on January 29, 2021.
9. Plaintiffs first filed a lawsuit against Meta based on purported injuries arising from their use of the Flo App on June 7, 2021.
10. Flo was created in 2015 and launched the Flo App in 2016.
11. During the Class Period, the Flo App was available for download on the iOS and Android app stores.
12. The Flo App is a mobile application that can be used to track periods and pregnancy.

13. Plaintiffs Chen, Frasco, Gamino, and Meigs downloaded the Flo App to track their menstrual cycles. Plaintiff Wellman downloaded the Flo App to track her menstrual activity and figure out the best day to get pregnant.

14. During the Class Period, ~~Google and~~ Meta ~~both~~ offered a Facebook SDK to app developers.

~~15. Flo incorporated the Google Analytics for Firebase SDK (“GA for Firebase SDK”) into the Flo App between September 2018 and February 2019.~~

~~156.~~ Flo incorporated code from ~~the~~ a Facebook SDK into the Flo App throughout the Class Period.

~~17. Flo incorporated the Fabric SDK into the Flo App prior to the deprecation of Fabric in 2020.~~

~~168.~~ The Custom App Event names at issue in this lawsuit are:

- “R\_CHOOSE\_GOAL”
- “R\_SELECT\_LAST\_PERIOD\_DATE”
- “R\_SELECT\_CYCLE\_LENGTH”
- “R\_SELECT\_PERIOD\_LENGTH”
- “R\_AGE\_CHOSEN\_PERIODS”
- “R\_AGE\_CHOSEN\_PREGNANCY”
- “R\_AGE\_CHOSEN\_PREGNANCY\_METHOD”
- R\_PREGNANCY\_METHOD”
- “R\_PREGNANCY\_METHOD\_DATE”
- “R\_PREGNANCY\_WEEK\_CHOSEN”
- “R\_PREGNANCY\_WEEK\_CHOSEN\_UNKNOWN”
- “SESSION\_CYCLE\_DAY\_FIRST\_LAUNCH”

~~179.~~ Flo shared the Custom App Events in Paragraph ~~165~~ that I just read to you with ~~Google and~~ Meta.

1 Dated: July 20, 2025

/s/ Melanie M. Blunschi

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23 Dated: July 20, 2025

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**SIGNATURE ATTESTATION**

I am the ECF User whose identification and password are being used to file the foregoing Jointly Proposed Revisions to Proposed Preliminary Jury Instructions. Pursuant to L.R. 5-1(i)(3) regarding signatures, I, Melanie M. Blunschi, attest that concurrence in the filing of this document has been obtained.

DATED: July 20, 2025

/s/ Melanie M. Blunschi  
Melanie M. Blunschi